

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

THOMAS B. GAINES, a deceased minor child by and through his personal representative(s) and/or successor(s) in interest; DIANA L. GAINES, individually, as Executor of the Estate of Thomas B. Gaines, and as Thomas B. Gaines' personal representative and successor in interest; GARY D. GAINES, individually and as Thomas B. Gaines' personal representative and successor in interest; and THE ESTATE OF THOMAS B. GAINES,

Plaintiffs,

v.

JOHNSON & JOHNSON, a New Jersey corporation; MCNEIL CONSUMER & SPECIALTY PHARMACEUTICALS, a Division of MCNEIL-PPC, INC., a New Jersey corporation; MCKESSON CORPORATION, a Delaware corporation; WAL-MART STORES, INC., a Delaware corporation; and DOES 1 through 100, inclusive,

Defendants.

Case No. CV 07-05503 PJH

**STIPULATION AND [PROPOSED]
ORDER SELECTING ADR PROCESS**

Counsel report that they have met and conferred regarding ADR and have reached the following stipulation pursuant to Civil L.R. 16-8 and ADR L.R. 3-5:

The parties agree to participate in the following ADR process:

Court Processes:

- ☐ Non-binding Arbitration (ADR L.R. 4)
- ☐ Early Neutral Evaluation (ENE) (ADR L.R. 5)
- ☐ Mediation (ADR L.R. 6)

(Note: Parties who believe that an early settlement conference with a Magistrate Judge is appreciably more likely to meet their needs than any other form of ADR, must participate in an ADR phone conference and may not file this form. They must instead file a Notice of Need for ADR Phone Conference. See Civil Local Rule 16-8 and ADR L.R. 3-5)

Private Process:

- ☒ Private ADR (*please identify process and provider*) JAMS or other qualified mediator

The parties agree to hold the ADR session by:

- ☐ the presumptive deadline (*The deadline is 90 days from the date of the order referring the case to an ADR process unless otherwise ordered*)
- ☒ other requested deadline: Close of expert discovery

Dated: January 9, 2008

/s/ Daniel Balaban*

DANIEL BALABAN

Attorney for Plaintiffs

Dated: January 9, 2008

/s/

THOMAS W. PULLIAM, JR.

Attorney for Defendants

*Plaintiffs' counsel, Daniel Balaban, agreed to permit Defendants' counsel to sign for him.

[PROPOSED] ORDER

Pursuant to the Stipulation above, the captioned matter is hereby referred to:

- ☐ Non-binding Arbitration
- ☐ Early Neutral Evaluation (ENE)
- ☐ Mediation
- ☒ Private ADR

Deadline for ADR session:

- ☐ 90 days from the date of this order
- ☒ other: Close of expert discovery

IT IS SO ORDERED.

Dated: _____

PHYLLIS J. HAMILTON
United States District Judge

CERTIFICATE OF SERVICE

I, GLORIA CADENA, declare that:

I am at least 18 years of age, and not a party to the above-entitled action. My business address is 50 Fremont Street, 20th Floor, San Francisco, California 94105, Telephone: (415) 591-7500.

On January 9, 2008, I caused to be served the following document(s):

STIPULATION AND [PROPOSED] ORDER SELECTING ADR PROCESS

by enclosing a true copy of (each of) said document(s) in (an) envelope(s), addressed as follows:

- ☒ BY MAIL: I am readily familiar with the business' practice for collection and processing of correspondence for mailing with the United States Postal Service. I know that the correspondence is deposited with the United States Postal Service on the same day this declaration was executed in the ordinary course of business. I know that the envelope was sealed, and with postage thereon fully prepaid, placed for collection and mailing on this date, following ordinary business practices, in the United States mail at San Francisco, California.
- ☐ BY PERSONAL SERVICE: I caused such envelopes to be delivered by a messenger service by hand to the address(es) listed below:
- ☐ BY OVERNIGHT DELIVERY: I enclosed a true copy of said document(s) in a Federal Express envelope, addressed as follows:
- ☒ BY FACSIMILE: I caused such documents to be transmitted by facsimile transmission and mail as indicated above.

Brian D. Witzer, Esq.
Daniel Balaban, Esq.
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**Attorneys for Plaintiffs: Sabrina
Brierton Johnson, Kenneth
Johnson and Joan Brierton-
Johnson**

I declare under penalty of perjury under the laws of the United States that the above is true and correct.

Executed on January 9, 2008 at San Francisco, California.


GLORIA CADENA